Hovsepian v. Apple, Inc.
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Exhibit G

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BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ACACIA MEDIA TECHNOLOGIES CORPORATION, Plaintiff, vs. NEW DESTINY INTERNET GROUP, et. al., Defendants.	Case No. SACV 02-1040 JW (MLGx)
AND ALL RELATED CASE ACTIONS.	

PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S COMBINED OPPOSITION TO:

(1) CLAIM CONSTRUCTION BRIEF OF AEBN, INC.; ADEMIA MULTIMEDIA, LLC; AUDIO COMMUNICATIONS, INC.; GAME LINK, INC.; INNOVATIVE IDEAS INTERNATIONAL; LIGHTSPEED MEDIA GROUP, INC.; NEW DESTINY INTERNET GROUP, INC.; VS MEDIA, INC.; AND

(2) CLAIM CONSTRUCTION BRIEF OF IWI AND OFFENDALE

DATE: February 6, 2004
TIME: 10:00 a.m.
CTRM: Hon. James Ware

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the functions recited in the claim is a source material library, which defendants state are "the original source items available in the transmission system organized in a library." (Defs' Brief at 32:2-5). Defendants' construction does not conform to what the inventors meant by the "source material library" in the specification; defendants are attempting to add limitations to the construction which are not even present in the specification.

Nothing in the specification states that only "original" items are stored in the source material library -- copies of source material items could be stored in one or more of the source material libraries. Further, nothing in the specification states that the items are "organized" in the source material library. The specification contemplates that the items would be assigned a unique identification code and would be organized when they are placed into the compressed data library for access by a user. ('992 patent, 6:35-39). Defendants also do not define what is meant by "library." Defendants argue that the library is not a "generic library," but do not state what they believe "library" should mean. Acacia's construction for "library" -- a place where materials are kept or a collection of such materials is the ordinary and customary meaning of the term and it is consistent with the specification as a place or collection of the materials described at 6:8-22, which includes audio and video tapes, film, and computer tapes, disks, and cartridges.

D. The Phrase "Storing Items Having Information in a Source Material Library" Should Not be Construed to Include a "Readily Accessible" Limitation

The terms in the phrase "storing items having information in a source material library" are used in their ordinary and customary manner and this phrase is construed as:

> the act of placing items having information in a source material library for later use where a source material library is a place where source material is kept or a collection of such material, source material are physical things at the point of origin or

procurement, items having information are units or members of groups which have information, and information is any meaning assigned to data by known conventions.

Defendants argue that the "source material library" is "not simply an off-site library, such as a public library or a video store that bears no relation to the transmission system." Defendants contend that the written specification of the '992 patent makes this definition clear, but do not cite to the written specification in support of their argument. (Defs'. Brief at 32:20-22). Defendants therefore interpret this claim phrase as meaning that "the transmission system has readily accessible for use original source items of the transmission system in a library." (Defs'. Brief at 32:28 - 33:2). Defendants' argument is easily rebutted by the specification of the '992 patent, which specifically states that the act of retrieving information for items is analogous to taking books off a shelf at the local public library. ('992 patent, 18:53-59).

Although claim 41 of the '992 is a method claim, and therefore its claim limitations must be acts[8] defendants' proposed definition does not state any act. This is peculiar, because the dictionary definition for "storing" earlier provided by defendants—"to place or leave in a location for later use"—describes an act. Defendants inexplicably ignore their own, earlier definition of "storing" and, instead, propose a definition which has no relationship to the ordinary and customary definition of "storing" when an act is being described.

As they did with respect to the library means, defendants attempt to add a limitation that the source material be "readily accessible" to the transmission system. Again, there is nothing in the written specification which either explicitly or implicitly requires that the source material be "readily accessible." This is a construction that

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[8] 35 U.S.C. § 101 (permitting claims on "processes"); Tilghman v. Proctor, 102 U.S. 707, 727 (1880) ("A process is an act, or a mode of acting"); Cochrane v. Deener, 94 U.S. 780, 788 (1876) ("A process is … an act, or a series of acts").